

OFFICE OF THE GOVERNOR
CONFIDENTIALITY AGREEMENT POLICY

1.0 RESPONSIBILITY

Governor's Administrative Office and Governor's Office Privacy Officer.

2.0 BACKGROUND

The Governor's Office maintains confidential information, including protected health information, financial information, social security numbers, etc. Federal laws, including the Health Insurance Portability and Accountability Act and the Privacy Act of 1974 and State law require that certain information be safeguarded. West Virginia State government must ensure its compliance with those laws and desires to protect its citizens' and employees' privacy.

3.0 SCOPE

This overarching policy applies to all Governor's Office employees, contracted personnel, vendors, and all other individuals performing functions on behalf of the Governor's Office.

4.0 POLICY

It is the Governor's Office's policy that all members of its workforce, including vendors and contracted personnel, shall sign an appropriate confidentiality agreement.

5.0 PROCEDURE

5.1 The Governor's Office Administrative Director shall ensure that each employee, including temporary and contract, as well as all vendors ("employee"), receives a Confidentiality Agreement Overview herein and signs a Confidentiality Agreement prior to accessing Governor's Office information. The Governor's Office shall ensure that the vendor's signed Confidentiality Agreement is made a part of the underlying Agreement between the Governor's Office and the vendor, in accordance with the Purchasing Division's requirements. The Overview is found in Attachment A and the Confidentiality Agreement is in Attachment B.

5.2 Confidential information shall only be used or disclosed in the official capacity of employment, and at no time shall it be disclosed or used for a personal or non-work related reason.

- 5.3 No employee shall have ownership rights or interests in any confidential information. All data in the possession of the Governor's Office is owned by the Governor's Office.
- 5.4 At no time shall an employee use confidential information or data in any way detrimental to the Governor's Office or to any individual whose records reside in the control of the Governor's Office. This prohibition shall not be construed to curtail an employee's whistleblower rights under federal and State law. If, in the process of making a good faith report under the provisions of W. Va. Code § 6C-1-1 et seq. or the Health Insurance Portability and Accountability Act of 1996, 42 U. S. C. 1320d, or other relevant whistleblower law, an employee finds it necessary to disclose confidential information to an appropriate authority in accordance with those statutes, the disclosure will not be treated as a breach of the security, privacy or confidentiality policies of the Governor's Office.
- 5.5 The Governor's Office will periodically monitor use of the information systems to ensure compliance with this policy.
- 5.6 All employees who become aware of a violation of this policy must report any violations to their supervisor and the Privacy Officer, within one business day of acquiring knowledge of said violation.
- 5.7 Any collection, use or disclosure of information contrary to the confidentiality agreement, law or the Governor's Office policy may result in disciplinary action.
- 5.8 The confidentiality agreement shall survive termination of employment.

6.0 REFERENCE

Section 7 of the Privacy Act of 1974; Public Law 93-579; 5 U.S.C. § 552a (note); Health Insurance Portability and Accountability Act of 1996; Public Law 104-191; codified at 42 U.S.C. § 1320d (note); W. Va. Code §§ 5A-8-21 and 22; Executive Order No. 6-06 (August 16, 2006).

ATTACHMENT A – CONFIDENTIALITY AGREEMENT OVERVIEW

The purpose of the Confidentiality Agreement is to secure the Governor's Office information. The Governor's Office collects, stores and transmits confidential information. Accordingly, the Governor's Office is concerned with protecting the confidentiality and integrity of this information, in its paper, electronic and verbal forms.

The attached Confidentiality Agreement is being instituted to ensure that all persons with access to protected health information or any other information deemed confidential, fully understand their obligations to limit their use of such information and to protect such information from disclosure. Special attention items, as well as definitions, are highlighted below. If you have any questions about this agreement or fail to understand the contents, please contact your supervisor or human resources department for further information.

Special attention items:

- Collection of protected health information and confidential information is permitted only in accordance with the Governor's Office policy, procedure and rules;
- Use of protected health information and confidential information, is permitted only when the user has a need to know such information;
- Disclosure of protected health information or confidential information is only permitted when the individual who is the subject of the information consents in writing, or in conformity with the Governor's Office's policies and procedures, as may be amended from time to time; and
- Protected health information and confidential information is protected in all forms, paper, electronic and verbal.

DEFINITIONS

Confidential information includes, but is not limited to, demographic, medical, and financial information protected by statute or when the release of which would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance, as approved by the Governor's Office counsel or designee. Confidential information may consist of verbal communications or be stored in written, printed, or computerized databases, and includes images as well as text.

It also includes all other information designated confidential by law, rule or the Governor's Office policy, such as trade secrets and security audits.

Disclosure is the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information, in accordance with the Governor's Office policy.

Need to know is the principle that states that a recipient shall only have access to the minimum information necessary to perform a particular function in the exercise of his or her responsibilities.

Protected health information, as defined by 164 C.F.R. § 103 and maintained by a HIPAA covered entity or business associate is for purposes of this agreement, information collected from any source that relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care; or that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Use of information is the sharing, employment, application, utilization, examination or analysis of such information within an entity that maintains such information.

ATTACHMENT B - CONFIDENTIALITY AGREEMENT

This agreement, including the attached overview, is entered into between the Governor's Office and _____ (the User). The User is considered an Employee a Consultant a Vendor Other, please specify _____.
(The Governor's Office and the User are jointly referred to as the Parties throughout this agreement).

All of the Parties agree as follows:

It is understood between the Parties that during the terms of his or her employment contract other that the User will only collect such protected health information (PHI) or other confidential information in conformance with the Governor's Office policy, procedures and rules.

It is also understood between the Parties that during the terms of his or her employment contract other to the extent that the User has a need to know such information, the User may have access to protected health information (PHI) or other information deemed confidential, in either paper, electronic or verbal form.

The User agrees that he or she will not disclose to anyone, directly or indirectly, any such PHI or other confidential information, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Governor's Office's policies, procedures and rules. If information specific release provisions and restrictions do not exist, then User agrees that he or she will only disclose confidential information (1) upon approval of the Governor's Office counsel or designee; and/or (2) with individuals who are known by the User to have prior authorization by his or her superior to have access to the data or information. All the above applies to release of information in total or fragmented form. Further, the User agrees that he or she will not misuse any media, documents, forms, or certificates in any manner which might compromise confidentiality or security or otherwise be illegal or against the Governor's Office policies, procedures or rules, such as altering a record, using a certificate improperly, etc.

The User understands that if he or she has any questions about the confidentiality of information or its collection, use or release, it is his or her responsibility to request clarification from his or her immediate supervisor.

Any document, report, study, article or other written information in whatever format, that the User prepares or information in whatever format that might be given to him or her in the course of his or her employment contract other, and any software, computer equipment, and/or any other property including, but not limited to, copyrighted materials that may be made available from time to time, are the exclusive property of the Governor's Office and shall remain in the Governor's Office's possession at ***The Office of the Governor, State Capitol, 1900 Kanawha Boulevard, East, Charleston, West Virginia***, except as specifically consented to by the Governor's Office. The User understands that all access to information is subject to monitoring and audit.

The User understands that even when he or she no longer has access to records at the Governor's Office, he or she is bound by this document and must continue to maintain the confidentiality of information to which he or she previously had access.

By signing below, the User acknowledges that he or she has read and understands the contents of this document and understands that any improper collection, use or disclosure of PHI or other information deemed confidential may result in disciplinary action. In addition, the Governor's Office reserves the right to seek any remedy available at law or in equity for any violation of this Agreement.

Name: _____

Witness: _____

Date: _____

Date: _____